Filed 6/9/09 P. v. Hubbard CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. LANGSTON HUGHES HUBBARD, Defendant and Appellant.	B204635 (Los Angeles County Super. Ct. No. YA065674)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lauren Weis Birnstein, Judge. Affirmed.

Robert Derham, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and David E. Madeo, Deputy Attorney General, for Plaintiff and Respondent.

Langston Hughes Hubbard appeals from the judgment imposed after a jury convicted him of attempted voluntary manslaughter, with use of a deadly weapon and infliction of great bodily injury, and found that he had suffered two prior serious felony and strike convictions and had served a prior prison term. The jury acquitted appellant of attempted murder, and the court dismissed the strike allegation with respect to one of the serious felonies. Appellant was sentenced to a term of 20 years. He contends that the court erroneously admitted hearsay evidence that he had a preexisting intent to assault the victim's brother. Because the challenged evidence was admitted with a restriction to non-hearsay consideration, and because the record does not reflect prejudice, we affirm the judgment.

FACTS

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence at trial established that on September 3, 2005, appellant attended a baby shower at the home of Demetria Oatis, his girlfriend. Also present were the victim, Toriano Brooks, and his brothers Arcie Brooks and David Brooks.[1] David had previously dated Oatis.

David parked his car across the street from the house. When he started to return to the car with a plate of food, Oatis approached him, and the two argued. Angry, Oatis called for appellant. Appellant emerged from the house, appearing intoxicated and angry. Oatis told him to "f__k him [David] up." David retreated and got into the car. Appellant and Oatis followed him and yelled that he should get out. Arcie, who had also come to the car, stood alongside it, to keep appellant and David apart.

Oatis briefly returned to the house and into the kitchen, where Toriano had gone for some cake. He saw Oatis wipe cake off a knife and return outside. Toriano testified he heard Oatis say to appellant, "Yeah, here he [David] is, . . . you said you were going to f__k him up, there he is, do it now." Oatis returned to David's car and stood close behind appellant, who put his hands behind his back.

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[1] For compactness, we refer to the three brothers hereafter by their first names.

Toriano came over to the car, and and Arcie explained that appellant meant to fight David. Oatis then told appellant he should "f__k up" Toriano, as his brother David "ain't going to get out the car." Appellant swung a fist at Toriano, who was unarmed, but had a cast on his right arm. Toriano fought back, and the two went to the ground. As appellant struck him in the chest and sides, Toriano felt jabbing pains. He got up and tried to get to the car. When appellant approached and swung again, Toriano held up his arms, and a knife gashed his forearm through the cast, and adhered to it. He removed the knife, and, seeing appellant charge, stabbed him in the back.

Appellant continued to pursue Toriano, who climbed into the backseat of the car. As he did so, appellant once more stabbed him, in the buttocks. David began to drive, and Toriano blacked out repeatedly. David saw blood on Toriano, himself, the seats and a car window. They proceeded to a fire station, from which an ambulance took Toriano to Harbor/UCLA hospital. He did not awaken for several days. Toriano had received 11 stab wounds; he had two punctured lungs and two punctured abdominal muscles; and he underwent intestinal removal. He remained hospitalized for over a month.

Appellant's defense was self-defense. Oatis testified that she became upset that David was at the shower, to which he had not been invited. They argued, and Toriano came to the car, where he showed David a knife secreted in his cast. Toriano then began the fight with appellant, who defended himself. Appellant received multiple stab wounds, and Oatis took him to the hospital. A sheriff's deputy who had been a guest at the shower and had remained inside the house testified that Oatis hadn't returned there before the fight.

DISCUSSION

Appellant's sole contention is that the trial court erred in admitting, over hearsay objection, Toriano's testimony that after Oatis left the house, she told appellant, "[Y]ou said you were going to f__k him [David] up, there he is, do it now." This contention is unavailing.

First, when the trial court overruled appellant's hearsay objection, it also limited Toriano's testimony to non-hearsay use. The court ruled: "Overruled. It's not for the

truth of the matter, ladies and gentlemen, it was the fact of what was said. Whether it's true or not, we don't care." The court thus directed the jury to consider Oatis's statement not for its truth, but only as an act or event in the overall transaction. The jurors are presumed to have followed the court's direction. (*People v. Stern* (2003) 111 Cal.App.4th 283, 299.)

Appellant argues that if not taken for its truth, the statement was irrelevant. Not so. Oatis's words constituted an exhortation of appellant to injure David. They were relevant to prove appellant's following behavior, including that he initiated the fight with Toriano.

Moreover, even had Toriano's testimony been admitted for its truth, that would not have been prejudicial error.[2] Appellant urges that his statement of intent to "f__k up" David would necessarily have defeated his trial claim of complete self-defense. That does not follow. And although charged with attempted murder, appellant was convicted only of the lesser offense of attempted voluntary manslaughter, committed on a sudden quarrel, in heat of passion, or in imperfect self-defense. Had the jury placed credence or emphasis on a prior intent to harm, it would likely not have found any of these ameliorating conditions. The verdict dispels any suggestion of prejudice.

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[2] Appellant concedes that his attributed prior statement of hostile intent against David was admissible, under both the state-of-mind (Evid Code, § 1250, subds. (a)(1), (a)(2)) and party admission (Evid. Code, § 1220) exceptions to the hearsay rule. But the same cannot be said of Oatis's restatement of appellant's declaration.

DISPOSITION

The judgment is affirmed.

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BAUER., J.*

We concur:

FLIER, Acting P. J.

BIGELOW, J.

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.